



ESA Basics

30 Years of Protecting Endangered Species

Introduction

When Congress passed the Endangered Species Act (ESA) in 1973, our leaders recognized that many of our Nation's native plants and animals were in danger of becoming extinct. They further expressed that our rich natural heritage was of "esthetic, ecological, educational, recreational, and scientific value to our Nation and its people."

The purpose of the ESA is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened." Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. All species of plants and animals, except pest insects, are eligible for listing as endangered or threatened. The list currently contains mammals, birds, reptiles, amphibians, fishes, snails, clams/mussels, crustaceans, insects, arachnids, and plants. Groups with the most listed species are (in order) plants, mammals, birds, fishes, reptiles, and clams/mussels.

The ESA is regarded as one of the most comprehensive wildlife conservation laws in the world. It is administered by the Interior Department's U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA)-Fisheries. The FWS has primary responsibility for terrestrial and freshwater organisms, while the NOAA-Fisheries' responsibilities are mainly for marine species.

Legislative History

The 1973 ESA replaced earlier laws enacted in 1966 and 1969, which provided for a list of endangered species but gave them little meaningful protection. The 1973 law has been reauthorized seven

times and amended on several occasions, most recently in 1988. The Endangered Species Act was due for reauthorization again in 1993, but legislation to reauthorize it has not yet been enacted. The Endangered Species program has continued to receive appropriations while Congress considers reauthorization, allowing conservation actions for threatened and endangered species to continue.

Federal Agencies

All Federal agencies are required to protect listed species and preserve their habitats. Federal agencies must utilize their authorities to conserve listed species and make sure that their actions do not jeopardize the survival of listed species. The FWS and the NOAA-Fisheries work with other agencies to plan or modify Federal projects so that they will have minimal impact on listed species and their habitat.

Working with States —Section 6

Species are also protected through partnerships with the States. Section 6 of the ESA encourages each State to develop and maintain conservation programs for resident federally listed threatened and endangered species. Federal financial assistance and a system of incentives are available to attract State participation. Some State laws and regulations are even more restrictive in granting exceptions or permits than the current ESA.

Working with non-Federal landowners, the FWS provides financial and technical assistance to landowners to implement management actions on their lands to benefit listed and nonlisted species.

Local Involvement

The protection of federally listed species on Federal lands is a top priority of the FWS, yet many species occur partially, extensively, or exclusively on private lands. Policies and incentives have been



*Bald eagle
Corel Corp. photo*

developed to protect private landowners' interests on their lands while encouraging them to manage their lands in ways that benefit endangered species. Much of the progress in recovery of endangered species can be attributed to public support and involvement.

Listing—Section 4

Species are listed on the basis of "the best scientific and commercial data available." Listings are made solely on the basis of the species' biological status and threats to its existence. In some instances, a species that closely resembles an endangered or threatened species is listed due to similarity of appearance. The FWS decides all listings using sound science and peer review to ensure the accuracy of the best available data.

Candidate Species—Section 4

The FWS also maintains a list of “candidate” species. These are species for which the FWS has enough information to warrant proposing them for listing as endangered or threatened, but for which development of a listing proposal is precluded by higher priority activities. The FWS works with States and private partners to carry out conservation actions for candidate species to prevent their further decline and possibly eliminate the need to list them as endangered or threatened.

Recovery—Section 4

The law’s ultimate goal is to “recover” species so they no longer need protection under the ESA. The law requires that recovery plans be developed describing the steps needed to restore a species to health. Appropriate public and private agencies and institutions and other qualified persons assist in the development and implementation of recovery plans. Involvement of the public and interested “stakeholders” is also encouraged. Recovery teams may be appointed to develop and implement recovery plans.

Consultation —Section 7

The law requires Federal agencies to consult with the FWS to ensure that the actions they authorize, fund, or carry out will not jeopardize listed species. In the relatively few cases where the FWS determines the proposed action will jeopardize the species, we must issue a “biological opinion” offering “reasonable and prudent alternatives” about how the proposed action could be modified to avoid jeopardy to listed species. Projects rarely are withdrawn or terminated because of jeopardy to a listed species.

Critical Habitat —Section 4

The law provides for designation of “critical habitat” for listed species when judged to be “prudent and determinable.” Critical habitat includes geographic areas “on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection.” Critical habitat may include areas not occupied by the species at the time of listing but that are essential to the conservation of the species. Critical habitat designations affect only Federal agency actions or federally funded or permitted activities.

International Species —Section 8

The ESA is the law that implements U.S. participation in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a 130-nation agreement designed to prevent species from becoming endangered or extinct because of international trade. The law prohibits trade in listed species except under CITES permits.

Exemptions —Section 10

The law provides a process for exempting development projects from the restrictions of the ESA. This process permits completion of projects that have been determined to jeopardize the survival of a listed species, if a specially appointed “Endangered Species Committee” decides the benefits of the project clearly outweigh the benefits of conserving a species. Since its creation in 1978, the Committee has only been convened three times to make this decision.

Habitat Conservation Plans—Section 10

This provision of the ESA is designed to relieve restrictions on private landowners who want to develop land inhabited by endangered species. Private landowners who develop and implement an approved “habitat conservation plan” providing for conservation of the species can receive an “incidental take permit” that allows their development project to go forward.

Definition of “Take” —Section 9

Section 9 of the ESA makes it unlawful for a person to “take” a listed species. The law states that “take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” The Secretary of the Interior, through regulations, defined the term “harm” in this passage as “an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

Compliance with Other Laws

The ESA is not the only law to protect species of wild mammals, birds, reptiles, amphibians and fishes, clams, snails, insects, spiders, crustaceans, and plants. There are many other laws with enforcement provisions to protect

declining populations of rare species and their habitat, such as the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and the Anadromous Fish Conservation Act. The Lacey Act makes it a Federal crime for any person to import, export, transport, sell, receive, acquire, possess, or purchase any fish, wildlife, or plant taken, possessed transported or sold in violation of any Federal, State, foreign or Indian tribal law, treaty, or regulation.

For More Information

For additional information about threatened and endangered species and current recovery efforts, contact the FWS at the address below. Additional materials and the current U.S. List of Endangered and Threatened Wildlife and Plants is also available at <http://endangered.fws.gov>.

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